SENATOR REED SMOOT AND THE MORMON CHURCH.

SPEECH

OF

HON. ALBERT J. HOPKINS,

OF ILLINOIS,

IN THE

SENATE OF THE UNITED STATES,

Friday, January 11, 1907.

WASHINGTON.
1907.

SPEECH

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The Senate having under consideration the following resolution, reported by Mr. BURROWS, from the Committee on Privileges and Elections, on June 2, 1906:

Resolved, That REED SMOOT is not entitled to a seat in the Senate as a Senator from the State of Utah—

Mr. HOPKINS said:

Mr. PRESIDENT: In determining the question whether REED SMOOT is entitled to a seat in the Senate of the United States from the State of Utah, it is necessary, as it seems to me, to first learn what power, if any, the Senate of the United States has over the State of Utah in the selection of the men whom that State sends to this body to represent her in all matters of legislation.

Can the Senate fix the qualifications of the Senators of any State in this Union?

Can this body arbitrarily determine the eligibility of its members from the different States?

Are there no constitutional or other limitations upon the Senate in arriving at the eligibility of a United States Senator from Utah who presents his credentials here under the seal of the State which he is authorized to represent in this legislative assembly?

The States, before the adoption of the Federal Constitution, were independent sovereignties. That great instrument which now unites what would otherwise be forty-five separate and independent sovereignties provides the qualifications of a Senator from any one of these States. Paragraph 3, section 3, Article I, of the Constitution reads as follows:

> No person shall be a Senator who shall not have attained to the age of 30 years and been nine years a citizen of the United States, and who shall not when elected be an inhabitant of that State from which he shall be chosen.

All who are familiar with the Madison papers containing debates on the Federal Constitution will remember that that language was adopted after a most extended and learned debate in the Constitutional Convention of 1787. Some of the best legal minds in the Convention were opposed to placing any qualifications in the Constitution regarding either Representatives or Senators. They proposed to leave it to the States to determine the qualification of the men whom they would send to either branch of Congress. Mr. Dickinson, in the course of the discussion, said that he was against any recitals of any qualifications in the Constitution; it was impossible to make a complete one, and a partial one would, by implication, tie up the hands of the legislature from supplying omissions. Mr. Wilson,

of Pennsylvania, whose remains were recently removed from North Carolina to the State of Pennsylvania, after nearly a hundred years reposing in the soil of a foreign State, in the debate that resulted in the adoption of the language that I have just quoted from the Constitution, said:

> And besides a partial enumeration of cases will disable the legislature from disqualifying odious and dangerous characters.

Mr. Madison, however, sometimes called "the Father of the Constitution," took a directly opposite view. He contended that the qualifications of United States Senators should be stated in the instrument that created such officers, and stated that to leave it to the legislature would vest an improper and dangerous power in such a body. He held that "the qualifications of the elector and elected were fundamental articles in the republican government and ought to be fixed by the Constitution." It was his opinion, drawn from experiences of other countries and especially that of England, that that power, left in the hands of the State legislatures, might by degrees subvert the Constitution.

I call Senators' attention to the debates in the Constitutional Convention to show that the language that was ultimately adopted was not expressed as we find it in the Constitution without due deliberation and careful thought on the part of the framers of that great instrument; and that the construction that they placed upon it was that the qualifications called for in the instrument itself negatived the idea that any other qualifications could be exacted either by the Senate itself or by any one of the States.

Paragraph 1 of section 5 of Article I reads as follows:

> Each House shall be the judge of the election returns and qualifications of its own members, etc.

It has sometimes been contended that the language broadens the power of the Senate in determining the eligibility of a member and enables it to fix whatever qualifications, in the judgment of the particular Senate, shall be deemed proper and just. This construction, as it seems to me, is not sound when we come to examine carefully the language of section 5 of Article I of the Constitution.

In section 2 of Article I of the Constitution the qualifications of a Senator are given and section 5 only goes to the extent of clothing the Senate with the sole power of determining whether those qualifications have been complied with. In other words, section 5 of Article I precludes the idea that a contestant for a seat in the United States Senate could successfully claim before any of the courts of the country, either State or Federal, that his successful competitor for the position of United States Senator was not, for example, 30 years of age, or that he had not been nine years a citizen of the United States or that at the time that he was elected United States Senator he was not an inhabitant of the State from which he was chosen.

Section 5 places the power entirely in the Senate of the United States to determine whether these qualifications have been complied with; and whatever a court might say respecting any one of the question above enumerated, the Senate itself would not be hampered by any such decision, but could have these qualifications inquired into and itself determine whether the Senator is eligible under those qualifications.

The Federalist has ever been regarded as entitled to great weight in determining the proper construction of the different sections and articles of the Constitution which are discussed in that great work. No. 60 of the Federalist, which was written by Alexander Hamilton, places the same construction upon the qualification of Senators for which I here contend, and asserts that no other or different qualifications than those can be exacted. In speaking upon this subject, he said:

> The truth is that there is no method of securing to the rich the preference apprehended but by prescribing qualifications of property, either for those who may elect or be elected. But this forms no part of the power to be conferred upon the National Government. Its authority would be expressly restricted to the regulation of the times, the places, the manner of elections. The qualifications of the persons who may choose or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution and are unalterable by the Legislature.

Text writers and many of the courts of last resort of the several States have held to this construction. In the case of Thomas *v.* Owens (4 Md., p. 223) the court says:

> Where a constitution defines the qualifications of an officer it is not within the power of the legislature to change or superadd to it unless the power be expressly or by necessary implication given to it. It is a fair presumption that where the Constitution prescribed the qualification it intended to exclude all others. (Paschal's Annotated Constitution, second edition, p. 305, sec. 300.)

The Hon. John Randolph Tucker, for many years a Member of Congress from the State of Virginia, and always regarded as a great authority on the Constitution, in a work of his which has been published since his death, called "Tucker on the Constitution," in speaking on this very topic, said:

> Nor can the Congress nor the House change these qualifications. To the latter no such power was delegated, and the assumption of it would be dangerous as invading a right which belonged to the constituent body and not to the body of which the representative of such constituency was a member. (Tucker on the Constitution, p. 394.)

Mr. Justice Story is one of the first and greatest authorities on the Constitution of the United States. His works have been quoted in this country and in England as of the highest authority on the different questions that he discussed relating to the Constitution of the United States. In speaking of the qualifications for office, he said:

> It would seem but fair reasoning upon the plainest principles of interpretation that when the Constitution established certain qualifications as necessary for office it meant to exclude all others as prerequisites. From the very nature of such a provision the affirmation of these qualifications would seem to imply a negative of all others. (Story on the Constitution, sec. 625.)

Foster on the Constitution is a work that deservedly ranks well with all students of the Constitution. He says:

> The principle that each House has the right to impose a qualification upon its membership which is not prescribed in the Constitution if established might be of great danger to the Republic. It was on this excuse that the French directory procured an annulment of elections to the council of five hundred, and thus maintained themselves in power against the will of the people who gladly accepted the despotism of Napoleon as a relief. (Foster on the Constitution, p. 367.)

Indeed, Mr. President, I think I am justified in saying that every lawyer of standing and every student of constitutional history of any learning has admitted that neither the Senate, Congress, nor a State can superadd other qualifications for a Senator to those prescribed by the Constitution.

It has ever been held, both in and out of the Senate, that the States could be trusted to send fit and proper men to this body. The Constitution fixed the age limit at a period where the Senator would have experience and matured judgment. His citizenship was fixed at a period sufficiently long to thoroughly familiarize him with the institutions of our country, and the fact that he must be an inhabitant of the State from which he is chosen provided against any influence outside of the State limits in selecting other than a citizen of the State.

In the earlier days of the Republic Senators were called and regarded themselves as ambassadors from the States they represented in this body, and met here as such to confer respecting legislation that would result in benefit to their common country.

The thirteen separate sovereign States that had recently gained their independence from England would any one of them have scorned the idea that Senators whom they selected to represent them could have qualifications other than those prescribed by the Constitution, fixed by the legislative body to which they were elected and were to become a part. Virginia did not consult Massachusetts as to the character or fitness of her Senators to represent the great State of Virginia in the first Senate that assembled under the Constitution of the United States, and when Massachusetts came to select her representatives in this great body she did not consult South Carolina as to whether that State or the Senate itself would be satisfied with the character and quality of men whom the old Commonwealth of Massachusetts had designated to represent her in the first Senate that assembled under the Constitution. They met, as I have already said, in the spirit that they were ambassadors from the State whose credentials they held, and while they legislated for the common good they never forgot in any of their deliberations the interests of the States that had honored them by selecting them as their Senators.

The power that is given the Senate under the Constitution is not to create Senators, but to judge of their qualifications. The States create the Senators. The qualifications to be judged are those, as I have already stated, prescribed in the Constitution itself. If the Senate find those qualifications exist in the applicant for a seat in this body from any given State, then, under all precedents, such Senator is entitled to take oath of office and take his place among the members of this great legislative body.

Senators, as such, are not civil officers of the Federal Government. It has been held ever since the adoption of our Federal Constitution that Senators are officers of the States. The Federal Government does not send them here to legislate for it; it has no power or authority, as such, to designate a single member of this body. It is utterly powerless to create the office of a United States Senator, and it is equally powerless to require any one of the States of the Republic to designate any particular individual as a Senator from such State.

The Federal Republic is a nation of delegated powers, and among these powers that are thus delegated by the several States to the Federal Government is not found anything relating to United States Senators. The States alone send Senators to this body to legislate for them and for the Federal

Government. This doctrine, Mr. President, is not new; it was announced by this very body more than a hundred years ago, in the case of William Blount, of Tennessee. The history of this case is familiar to many of the Senators. He was a Senator from the State of Tennessee from 1796 to July 8, 1799. During that period it was claimed that he engaged in treasonable correspondence with a foreign nation and was guilty of a high misdemeanor. Articles of impeachment were voted against him by the House of Representatives and duly presented to the Senate of the United States, and Mr. Blount was called upon to make answer thereto. He employed as his counsel Jared Ingersoll and Alexander J. Dallas, of Philadelphia, two of the most distinguished constitutional lawyers in the United States. They were men who were in the forefront of their profession and whose learning and ability would make them leaders of the bar of the United States at any period in its history. They had made a careful study of the Constitution of the United States, and when they presented Mr. Blount's defense in answer to the articles of impeachment presented by the House of Representatives, they interposed in his behalf the following plea:

> That although true it is that he, the said William Blount, was a Senator of the United States from the State of Tennessee at the several periods in the said articles of impeachment referred to, yet that he, the said William Blount, is not now a Senator and is not, nor was, at the several periods so as aforesaid referred to, an officer of the United States, nor is he, the said William Blount, in and by the said articles charged with having committed any crime or misdemeanor in the execution of any civil office held under the United States or with any malconduct in civil office or abuse of any public trust in the execution thereof.

This plea, Mr. President, was interposed to the articles of impeachment which charged him with this misdemeanor of the treasonable character that I have already referred to while he was a Senator of the United States. His learned counsel by this plea raised the very point that I have briefly discussed—that as a Senator of the United States from the State of Tennessee he was not an officer of the United States, and therefore that the Senate had no jurisdiction to try his case.

He also interposed a further defense, as follows:

> That the courts of common law of a criminal jurisdiction of the State wherein the offenses in the said articles recited are said to have been committed, as well as those of the United States, are competent to the cognizance, prosecution, and punishment of the said crimes and misdemeanors if the same have been perpetrated, as is suggested and charged by the said articles, which, however, he utterly denies.

It will thus be seen, Mr. President, that in formulating his defense these eminent lawyers took the position that the Senate of the United States had no jurisdiction to try him for the crime charged.

These defenses were argued at length by the learned counsel who represented Mr. Blount and were discussed by the Senators themselves. The two propositions that were advanced by Mr. Dallas and argued at great length and successfully are as follows:

> First. That only civil officers of the United States are impeachable and that the offense for which an impeachment lies must be committed in the execution of a public office.
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> Second. That a Senator is not a civil officer, impeachable within the meaning of the Constitution, and that in the present instance no crime or misdemeanor is charged to have been committed by William Blount in the character of a Senator.

I have not the time nor inclination on this occasion to follow at any length the arguments that were made pro and con upon the propositions raised by Mr. Ingersoll and Mr. Dallas, as stated by me here. It is sufficient to know that weeks passed, and after this full and elaborate argument, and the Senate of the United States, sitting as a court of impeachment, had fully deliberated on the question, on the 11th of February, 1799, determined as follows:

On motion it was determined that—
The court is of the opinion that the matter alleged in the plea of defendant is sufficient in law to show that this court ought not to hold jurisdiction of the said impeachment and that the said impeachment is dismissed.

Monday, January 14. The court being opened, the parties attending and silence being proclaimed, judgment was pronounced by the Vice-President as follows:

"Gentlemen, managers of the House of Representatives, and gentlemen of counsel for William Blount: The court, after having given the most mature and serious consideration to the question and to the full and able arguments urged on both sides, has come to the decision which I am now about to deliver.

"The court is of opinion that the matter alleged in the plea of the defendant is sufficient in law to show that this court ought not to hold jurisdiction of the said impeachment, and that the said impeachment is dismissed."

From that day to this it has never been seriously contended that a United States Senator is a civil Federal officer of a character that would enable the Senate to impeach him for high crimes or misdemeanors for any act of his during his service as such Senator.

A Senator is amenable to the courts of the country for any crime the same as any other citizen; and, as was contended by Mr. Ingersoll and Mr. Dallas in the Blount impeachment case, the proper forum to try a Senator for a crime or misdemeanor is in the State or Federal courts.

That a State can not add any qualifications other than those prescribed by the Constitution of the United States has been decided repeatedly by this body. One of the notable cases was that of Lyman Trumbull, of Illinois, my predecessor in office. Mr. Trumbull was elected a Senator from Illinois and took his seat in this body on the 4th day of March, 1855. A protest was filed by certain senators and representatives of the legislature of the State of Illinois against his election as a United States Senator, and the question of his eligibility and his right to hold a seat in the Senate of the United States was referred to the Committee on Privileges and Elections of the Senate.

The protestants in the case of Senator Trumbull alleged that he was elected a judge of the supreme court of Illinois in June, 1852, for a term of nine years; that he was duly commissioned and entered upon the discharge of his duties as such judge; that in May, 1853, he resigned this office to take effect July 4, 1853; and that on February 8, 1855, he was elected to the Senate of the United States for the term beginning March 4, 1855.

The constitution of the State of Illinois at that time provided:

The judges of the supreme and circuit courts shall not be eligible to any office of public trust or profit in this State or the United States during the term for which they are elected, nor for one year thereafter; all votes for either of them for any elective office except that of judge of the supreme or circuit courts, given by the general assembly or by the people shall be void.

Under this clause of the constitution the protestants insisted that Judge Trumbull was ineligible for the office of United States Senator. This question was carefully considered by the Senate, and after elaborate debate on the question as to whether the State of Illinois could superadd a qualification to that contained in the Constitution of the United States, it was determined by a vote of thirty-five to eight that the State could not; and the resolution offered by Senator Crittenden, as follows—

Resolved, That Lyman Trumbull is entitled to a seat in this body as a Senator elected by the legislature of the State of Illinois for the term of six years from the 4th of March, 1855—

was adopted by a vote of thirty-five to eight.

It is interesting to note, Mr. President, the men who voted in favor of seating Senator Trumbull under the conditions that I have briefly and imperfectly expressed. Those who voted in favor of the resolution that Senator Trumbull was entitled to a seat in this body are as follows:

Adams, Allen, Bell of Tennessee, Bright, Brown, Butler, Cass, Collamer, Crittenden, Dodge, Durkee, Evans, Fessenden, Fish, Foote, Foster, Geryer, Hale, Hamlin, Harlan, Houston, Hunter, James, Mallory, Mason, Pearce, Reid, Rusk, Sebastian, Seward, Sumner, Toucey, Wade, Wilson, and Yulee.

The Senate will note that some of the greatest lawyers of the age and some of the most distinguished statesmen whose lives grace the history of our country voted in favor of the proposition that Senator Trumbull was entitled to his seat. In the course of the debate on this resolution Senator Crittenden said:

We are to look to the Constitution of the United States for the whole frame of this Government. It has created all the powers and all the instruments of this Government. It has created the Senate. Before this creation neither the State of Illinois as such nor any other State in the Union had any power to elect a Senator. There was no such office to be filled by them as Senator of the United States. Their agency was simply employed by the Federal Constitution. The agency of the legislatures of the several States was employed to elect Senators who constitute this body. It is an all-important branch of the Government. The designation of the power that was to elect, the designation of the persons qualified to be elected, all entered into the very essence of the subject. All this was to have its influence on this Government. All and every single circumstance of this was to have its influence in connecting the State governments and the General Government and in connecting them in such a way as to preserve that species of political relations between them which it was thought would operate most advantageously to all.

This was the view of the framers of the Constitution of the United States. It was a subject for them whether the legislature should elect Senators, whether the people should elect them, or whether the governors of the several States should appoint them. All this was within the competency of the framers of the Constitution. Neither people nor governors nor legislatures had previously any power to elect or appoint a Senator. There was no such officer; there was no such power. The whole was a new creation. The Constitution determines that the power to choose Senators shall be in the legislatures of the several States. The power to elect Senators was committed to the legislatures. Who shall they be, was the next question. The question was how to designate a Senator by some prescribed qualification, so as to fix the class from which he should come. Shall he be a man who is required to possess any particular amount of fortune? Shall he be a man who must be subjected to some religious test? Of what age shall he be?

Were not all these points fairly presented to the framers of the Constitution of the United States? Were they not important questions to be acted upon and decided? They were framing the Government. The Constitution of this body was an essential part of the Government. That was to depend on the parties, or the condition of the parties, out of whom they would make this great council of the nation. Should he be a citizen? Might they select him anywhere? Should he be an inhabitant of his State? Might he be of any age?

All these subjects being considered, the Constitution of the United

States decides upon the whole matter by providing that each Senator shall be of the age of 30 years, shall have been at least nine years a citizen of the United States, and shall be an inhabitant of the State from which he is chosen.

Now, sir, does this not embrace the whole subject? Does it not regulate the whole subject? According to the plain meaning of the Federal Constitution every inhabitant of a State, 30 years of age, who has been nine years a citizen of the United States, is eligible to the office of Senator. What more can be said about it? It is now supposed by those who contend that Mr. Trumbull is not entitled to his seat, that it is competent for a State, by its constitution—and I suppose they would equally contend by any law which the legislature might from time to time pass—to superadd additional qualifications. The Constitution of the United States, they say, has only in part regulated the subject, and therefore it is no interference with that Constitution to make additional regulations. This, I think, it will be plain to all, is a mere sophism, when you come to consider it. If it was a power within the regulation of, and proper to be regulated by, the Constitution of the United States, and if that Constitution has qualified it, as I have stated, prescribing the age, prescribing the residence, prescribing the citizenship, was there anything more intended? If so, the framers of the Constitution would have said so. The very enumeration of these qualifications excludes the idea that they intended any other qualifications. That is the plain rule of ordinary construction; but, for a reason above all technical considerations, it is applicable here. The object of the Federal Constitution was to have a body framed by a uniform rule throughout the United States, coming here to constitute this great council of the country—coming here by the agency of the same elective power, the State legislatures—coming here under the same requirements and with the same qualifications—and standing here upon a perfect and exact equality in all respects to represent the nation justly and equally, and with a sole regard to the common welfare of the Republic.

This argument of Senator Crittenden has been held sufficient to forever put at rest the idea that a State could add any qualifications to that of a Senator of the United States other than those prescribed in the Constitution of the United States, and since then men who have been disqualified under the constitution of their States have been repeatedly elected to this body and admitted to a seat and a share in its deliberations without question.

My distinguished colleague, who has so long and so honorably represented Illinois in this body, when he first came here as a Senator from Illinois, was laboring under this same alleged disqualification that was urged against Senator Trumbull, but his right to his place in the Senate here was never questioned by any member of this body.

So, Mr. President, I think it is unnecessary for me to multiply cases demonstrating the fact that the individual States have no power to add any qualification to a Senator other than that prescribed in the Federal Constitution. It is equally clear, in my judgment, Mr. President, that this Senate has no constitutional authority to inquire into the antecedents and the early career and character of a Senator who comes here for admission with the credentials of his State.

The theory of the fathers of the Constitution was that the legislators of the State, who are directly amenable to the people of the State, would elect fit men to represent such State in the Senate of the United States. It was not supposed by the framers of that great instrument that the Senate of the United States would sit as a court of inquiry or an inquisition to investigate the career and character of any man whom a State might see fit to honor with a seat in this body.

It was left by the Constitution of the United States to each State to determine the character of the men whom they would prefer to represent them as United States Senators. I am well

aware, Mr. President, that there have been different views expressed on this question by Senators in the discussion of the eligibility of Senators who have applied here for admission to a seat in this body; but I make the assertion, after a careful study of the cases that have been considered by the Senate from the adoption of the Constitution of the United States to the present time, that no Senator has ever been denied a seat in the Senate of the United States because of any lapse in his career prior to his being selected by his State as such Senator.

A notable instance is found in the so-called "Roach case." Senator Roach, as many of the Senators who are now serving in this body will remember, presented his credentials as a Senator from the State of North Dakota and asked for admission to represent that State as a United States Senator in this body. After taking the oath of office it was discovered that in his earlier career he was connected with one of the banks in the city of Washington, in the District here, and, as such officer, embezzled quite a large sum of money, and that he was charged to be a fugitive from justice. The question was raised and elaborately argued as to whether that disqualified him from holding his seat in the Senate as a Senator from North Dakota. After an elaborate discussion of this subject and an examination of the precedents covering the entire period of our national history, without any vote being taken upon the subject, Senator Roach was permitted to serve out his time as a United States Senator in this body.

I think, Mr. President, that this example, so recently before us, has settled forever the question that the Senate will not undertake to revise the judgment of a State in determining the character of man whom the State shall select as a United States Senator. The Senate will content itself with what occurs while such Senator is a member of this body. If the conduct of the Senator is such as to lower the standard of the Senate or to bring it into disgrace, or if the Senator be guilty of any misdemeanor that would bring this great legislative body into disfavor, the power exists under the Constitution of the United States to expel such a member.

Paragraph 2, section 5, of Article I of the Constitution of the United States reads as follows:

> Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Ample power is given in this provision of the Constitution to protect the high character of this great legislative body. While the Senate, as I have shown, can not add qualifications to those prescribed in the Constitution for a Senator from any State; and while the State itself can not superadd other qualifications; and while the Senate itself, by a long line of precedents, has established the fact that the previous career and character of the Senator must be determined by the State that sends the Senator to this body, still after he becomes once a member he must deport himself in a manner consistent with the dignity and high character of the Senate of the United States or he will become amenable to this provision of the Constitution which I have just read and which will enable the Senate itself, if his conduct be such as to warrant it, to expel the member by a two-thirds vote.

In the case I have just cited from North Dakota, had the embezzlement charged to Senator Roach occurred during his term of service the Senate would clearly have been warranted in expelling him as a member from this body.

Any disorderly behavior that tends to bring reflections upon the Senate in any form or at any time while the Senator is a member of the Senate will be sufficient, in my judgment, to warrant the Senate in taking the course prescribed by the Constitution in expelling a member.

The considerations which I have here presented, Mr. President, will indicate to the Senate the limitations within which the Senate itself can inquire into the question as to whether REED SMOOT is entitled to retain his seat in the Senate of the United States.

It is conceded by the distinguished chairman of the Committee on Privileges and Elections in the very able, and, indeed, I may say remarkable, speech which he made here the other day in support of his contention that Senator REED SMOOT is not entitled to a seat in the Senate, that he possesses all of the qualifications spoken of in the Constitution itself—he is over 30 years of age, he has been more than nine years a citizen of the United States, and he was an inhabitant of the State of Utah at the time he was elected by the legislature of that State a Senator of the United States.

It is also conceded, Mr. President, not only by the able chairman of this committee, but I think by all who are at all familiar with the case that was presented to the Committee on Privileges and Elections, that Senator REED SMOOT is not a polygamist; that he has never married a plural wife, and has never practiced polygamy; that he is a man in his personal relations as son, husband, father, and citizen above reproach; that in all of the relations of citizenship he has lived a singularly pure and upright life.

Why, then, should he be expelled from this body, disgraced and dishonored for life, a stigma placed upon his children, his own life wrecked and the happiness of his wife destroyed? He is a Christian gentleman, and his religious belief has taken him into the Church of Jesus Christ of Latter Day Saints, commonly called the "Mormon Church."

I shall refer later in my remarks, Mr. President, to the arraignment of this church by the distinguished senior Senator from Michigan. It is my purpose now, however, to challenge the attention of the Senate to charges that were originally made against Senator SMOOT, that resulted in the investigation which has culminated in the resolution now pending before the Senate respecting Senator SMOOT'S seat in the Senate. There were two petitions presented to the Senate, which were referred to the Committee on Privileges and Elections, protesting against REED SMOOT retaining his seat in the Senate of the United States. One was signed by Mr. Leilich. This protest charged that REED SMOOT is a polygamist and that, as an apostle of the Church of Jesus Christ of Latter-Day Saints, commonly called the Mormon Church, he had taken an oath of such a nature and character as that he is thereby disqualified from taking the oath of office required of a United States Senator. No person appeared before the Committee on Privileges and Elections to support these charges. Judge Tayler and Mr. Carlisle, who con-

ducted the case against Senator SMOOT before the committee, disclaimed any connection with these charges, and I think I am safe in saying that both of these distinguished lawyers claimed that there was no truth in either of the charges made. They conceded before the committee that Senator SMOOT is not a polygamist and never has been. It is also equally clear, Mr. President, that he has never taken an oath as apostle of his church of a nature and character that disqualifies him from acting as United States Senator.

I feel sure that neither the distinguished chairman of the Committee on Privileges and Elections nor any of the people who sympathize with the position which he holds in this case will contend for a moment that there is an apostolic oath which has been taken by Senator SMOOT which disqualifies him from discharging the duties of the high office of Senator of the United States from the State of Utah.

The real charges that have been considered relate more particularly to the protest that was signed by W. M. Paden and a number of others, which charged in substance that he is a member of a self-perpetuated body of fifteen men who constitute the ruling authorities of the church, known as the "hierarchy;" that they claim supreme authority, divinely sanctioned, to shape the belief and control the conduct of the members of the Mormon Church, and that they encourage and believe in polygamy and the practice of polygamous cohabitation and countenance and connive at violations of the laws of the State of Utah and of the United States, and that as a member of the hierarchy REED SMOOT should be held guilty of any crime committed by any member of the hierarchy and should be held equally guilty of any of the violations of the laws of the State of Utah or of the United States by members of that self-perpetuating body.

I listened, Mr. President, with a great deal of interest to the eloquent denunciation of the crime of polygamy by Mr. BURROWS, the senior Senator from Michigan, in his speech here the other day, and I sympathize with him fully in his arraignment of polygamy and polygamous cohabitation. I think it is a relic of a barbarous age, and as such I denounce it. It is the destroyer of the ideal American home life and the corrupter of the morals of those who practice it.

I share also, Mr. President, in the condemnation which the Senator launched against Brigham Young and other leaders of the church who, in their day and generation, promulgated and practiced this crime upon their followers. But, Mr. President, Brigham Young and the present head of the Mormon Church are not on trial before the Senate of the United States. Brigham Young has long since passed from this life into another world and there, according to the beliefs of Protestants and Catholics alike, before a just Judge, will pay the full penalty for the crimes he committed while on earth. The present head of the Mormon Church is destined in the fullness of time to go before the same tribunal and to have his acts and deeds passed upon by the same impartial Judge.

Mr. BEVERIDGE. Will the Senator from Illinois permit me?

The PRESIDING OFFICER (Mr. KEAN in the chair). Does the Senator from Illinois yield to the Senator from Indiana?

Mr. HOPKINS. I yield.

Mr. BEVERIDGE. I have listened with profound interest to the unanswerable argument of the Senator from Illinois to the effect that no Senator is to be criticised or his title to be assailed by reason of something he may have done before his State elected him a member of this body. In that connection, not only has Brigham Young passed to his rest, not only is it conceded, in spite of the belief of the people, that Mr. SMOOT is not a polygamist, but he never was one. So that not only does this offense of which he is popularly supposed to be guilty not attach to him now, but it never did attach to him.

Mr. HOPKINS. The Senator is correct.

Mr. BEVERIDGE. I think it is worth while to call particular attention to that fact, because in the minds of the people of the country I think everybody knows that Mr. SMOOT is apparently being tried because he is a polygamist, whereas it is not only proved that he is not, but it is gladly admitted that he is not and that he never has been.

Mr. DUBOIS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Illinois yield to the Senator from Idaho?

Mr. HOPKINS. Certainly.

Mr. DUBOIS. It is only for a moment.

The protest against REED SMOOT is what he is being tried on. It is set forth thoroughly in the record. It is not in the minds of the people or of Senators that he is being tried because he ever has been or is now a polygamist.

Mr. BEVERIDGE. Will the Senator from Illinois yield for a moment?

Mr. HOPKINS. I yield.

Mr. BEVERIDGE. It is pertinent in a debate of this kind to refer to what exists in the minds of the public—what the people have been led to believe. We, as a court, will of course try Senator SMOOT upon the record. But it has been given out to the people in numberless methods that Mr. SMOOT, a polygamist, is occupying a seat in the Senate of the United States; that a violator of our laws in that particular is holding a seat in this body. That is entirely untrue, and from now on in this debate the American people ought to know what those who are against Mr. SMOOT admit, but what is not popularly known—that he not only not now is, but never has been a polygamist, and, on the contrary, his home life is pure and perfect.

Mr. HOPKINS. I recognize what the Senator from Indiana says is true.

Mr. SCOTT. Mr. President——

The PRESIDING OFFICER. Does the Senator from Illinois yield to the Senator from West Virginia?

Mr. HOPKINS. I do.

Mr. SCOTT. I wish to ask the Senator from Illinois if it is not true that the Presbyterian Church embraces in its creed, or its confession of faith, or whatever it may be called, the doctrine of infant damnation? If so, I should like to ask him whether all members of the Presbyterian Church can be held accountable for that doctrine when many of them do not believe it?

Mr. HOPKINS. I did not rise, Mr. President, either to praise or to condemn the Presbyterian Church. I have very many dear friends who owe allegiance to that church and to

its doctrines, and I know them to be good citizens wherever they live, and that they exercise a Christian influence where their influence has been exerted at all. I am not here for the purpose of discussing any other religious sect. We all know that the human race, from its earliest stages, has developed through bloody wars in the name of religion, and it is not for me to speak of the history of any of the different churches, because I know that in the twentieth century they are all exerting a profound and beneficial influence upon mankind.

My purpose to-day will be to show to the Senate and the people of this country that whatever crimes may have been committed in the earlier history of the church in the name of Mormonism is not for us to condemn or condone here. We have only to consider the personnel of REED SMOOT and his relations to the church since he became a member of this body. If it shall appear, Mr. President, from a careful analysis of the testimony which has been taken by the Committee on Privileges and Elections that REED SMOOT is guilty of the crimes charged against the Mormon Church by the eloquent and distinguished Senator from Michigan in his speech, then I say we should all unite in expelling him from the Senate.

If, however, Mr. President, it shall appear from a candid consideration of all the testimony which has been presented to the Committee on Privileges and Elections that REED SMOOT stands forth guiltless of any offense punishable by law or any conduct unbecoming a Christian gentleman, then the mere fact that he is a member of the Mormon Church, or that he is an apostle in that church, should not debar him from exercising the rights of a Senator in this body, and should not deprive the State of Utah, which, under our Constitution, has the same rights and privileges accorded to any one of the original thirteen States, from having a full representation in the United States Senate.

I shall, Mr. President, before I close, trace somewhat briefly the history of the Mormon Church and note the character and conduct of some of the men who have been prominently identified with that church from its organization to the present time. But I shall not follow the example set by the Senator from Michigan and declare against the church and against Senator SMOOT simply because I find that in some period of the history of the church its leaders have been violators of law and it has taught doctrines that in this generation are condemned by all right-minded citizens. If this line of argument, which was so largely indulged in by the Senator from Michigan, should have a controlling influence in the Senate or in the country, would a member of any one of the churches, either Protestant or Catholic, be safe?

If we are to charge a member of a Christian church with all the crimes that have been committed in its name, where is the Christian gentleman in this body who would be safe in his seat?

It must be conceded, Mr. President, that the Mormons are sincere and honest in their religious convictions. Senator SMOOT, as an apostle in the church, has no control over the temporal or business affairs of the members of that church. His business is to preach the gospel.

Senator SMOOT is a Christian man. That he believes that God interests Himself in the affairs of men is no more than a

belief that is professed by all Christian people. One of the earliest lessons that is taught in childhood by Christian parents is to inculcate the belief in the children that in their little troubles they should go to their closets and pray God for light and guidance, and that He will help them. It is this belief that God does take an interest in the affairs of men that has made the Christian church the power for good that it has been in the world. You take that doctrine away and you destroy in a large measure the beneficent influence that has been exerted upon mankind in all ages during the Christian era.

Many things have been done in the name of the Mormon Church in its earlier history which are condemned by all right-thinking men, not only outside of that church, but in the church as well. The Mormon people have become better educated, their spiritual vision has become clearer, and they now condemn as heartily as we do many acts that were regarded in the days of Brigham Young as in accordance with the word of God. This moral elevation and spiritual improvement, which has been noted in the Mormon Church in the last twenty years, is but a repetition in another form of what is found in the history of all of the various churches, both Protestant and Catholic.

Mr. President, we can see from the testimony that appears before the Committee on Privileges and Elections that the Mormon Church is undergoing a radical change for the better.

REED SMOOT is an apostle of this higher and better Mormonism. He stands for the sacred things in the church and against polygamy and all the kindred vices connected with that loathsome practice. In his position as a member of the church, and as an apostle and preacher of the doctrines of the church, he has done more to stamp out this foul blot upon the civilization of Utah and the other Territories where polygamy has been practiced than any thousand men outside of the church.

I dissent in toto, Mr. President, from the conclusions reached by the Senator from Michigan [Mr. BURROWS] regarding the influence of the Mormon Church at the present time on the temporal affairs of its people and also on the conclusion that he sought to establish that polygamy is still a part of the religion and practice of the Mormon Church as such.

With the indulgence of the Senate, I shall take a little time to trace the history of the church and its relation to the Government of the United States during the Territorial history of Utah and what has been done since to destroy polygamy and polygamous cohabitation.

The founder of the church, Joseph Smith, was killed in Hancock County, Ill., in 1844. This was the culmination of a long series of troubles that had existed between the Gentiles and the Mormons, in Missouri first, and later in Illinois. The leaders of the church, after the death of Smith, decided to abandon their home at Nauvoo, Ill., and seek a new place for the establishment of their church and their homes, beyond the authority of the State and Federal governments. Under the leadership of Brigham Young they traversed the Great Plains of the West, and never stopped in their onward march until they reached the Great Salt Lake in Utah, then a part of the territory of the Republic of Mexico. Here they pitched their tents and commenced to build in this wilderness their churches and their homes. This Mexican territory became a part of the United States under the

treaty of Guadalupe-Hidalgo, and the Mormon people again became amenable to the laws of the American Republic.

Brigham Young at this time was the recognized leader of the Mormon people. He had promulgated the doctrine of polygamy and claimed that the martyred Joseph Smith had received directly from God the authority for Mormons to marry plural wives and practice polygamous cohabitation.

After Utah became a part of the possessions of the United States it was organized into a Territory, and in 1850 Brigham Young, then the husband of several wives, was made the governor of the Territory. He was nominated by President Fillmore and his appointment was confirmed by the Senate. In 1852, two years after this appointment, he publicly proclaimed polygamy as the doctrine of the Mormon Church and it was accepted and practiced by his followers. In 1854, two years after he had publicly proclaimed polygamy as the doctrine of the Mormon Church, he was again nominated by President Pierce for governor of the Territory, and again confirmed by the Senate.

At the time that he was nominated by President Pierce and confirmed by the Senate he was living with many plural wives, and many of his followers were living in polygamous cohabitation. No legislation was passed by Congress on this subject, and it seemed that no successful protest was made against the head of the Mormon Church being made governor of the Territory and Indian agent to represent the Government of the United States with the red men.

The first legislation on this subject was in 1862. In that year Congress passed "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places," etc.

The first section of that statute reads as follows:

> That every person having a husband or a wife living who shall marry any other person, whether married or single, in a Territory of the United States, or other place over which the United States have exclusive jurisdiction, shall, except in the cases specified in the proviso to this section, be adjudged guilty of bigamy, and upon conviction thereof shall be punished by a fine not exceeding $500 and by imprisonment for a term not exceeding five years: *Provided, nevertheless,* That this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years without being known to such person within that time to be living; nor to any person by reason of any former marriage which shall have been dissolved by the decree of a competent court; nor to any person by reason of any former marriage which shall have been anulled or pronounced void by the sentence or decree of a competent court on the ground of the nullity of the marriage contract.

Senators will note from reading the statute that while it prohibited plural marriages and made the same bigamy, it did not punish or in any manner interfere with the continued cohabitation of those who had previously entered into the polygamous relations.

It was not until the 22d of March, 1882, under what is known as the Edmunds Act, that polygamous cohabitation became punishable under the laws of the United States.

Sections 3 and 7 of the Edmunds Act read as follows:

> SEC. 3. That if any male person, in a Territory or other place over which the United States has exclusive jurisdiction, hereafter cohabits with more than one woman, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than $300 or by imprisonment for not more than six months, or by both said punishments, in the discretion of the court.

SEC. 7. That the issue of bigamous or polygamous marriages, known as Mormon marriages, in cases in which such marriages have been solemnized according to the ceremonies of the Mormon sect, in any Territory of the United States, and such issue shall have been born before the 1st day of January, A. D. 1883, are hereby legitimated.

The Edmunds Act, so called, was taken by the leaders of the church at that time as persecution, and they assumed the attitude of martyrs to their religion. Many prosecutions followed and many convictions were had. Prominent Mormons who were guilty of practicing polygamy were driven out of the country into Canada and Mexico and foreign lands. The feeling among the Christian people of the Republic was that not enough had been done to entirely crush out this foul and debasing practice, and hence in 1887 Congress enacted what has since been called the Edmunds-Tucker Act, which changed the rules of evidence so as to make a lawful husband or wife of a person accused of bigamy, polygamy, etc., a competent witness. Not only this, but the law provided for the annulment and dissolution of the corporation known as the Church of Jesus Christ of Latter Day Saints.

Under both the Edmunds and the Edmunds-Tucker Act all children that had been born to plural wives were made legitimate, so that the children of the third or fourth wife, by act of Congress, could inherit property from the father and have all of the rights that are guaranteed under the laws of our country to the children by the first wife.

There is no question but what many of the Mormons at this time believed that the Federal Government had no constitutional authority to interfere with polygamy or polygamous cohabitation because of its being practiced as a part of the Mormon religion. They were fanatics in this, precisely as Sydney Smith, a hundred years ago, found fanatics in the Methodist Church. They went to the very limit in their opposition to the law, and to show their good faith in this, wrong as we all know them to have been, it is only necessary for me to cite to the Senators the case of Reynolds *v.* The United States, where he voluntarily came before the courts and furnished the proof of violating the Edmunds law in order to test the question as to whether the Mormon religion, as promulgated by Brigham Young, could be practiced by his followers in spite of the legislation of Congress.

The Supreme Court very properly and justly held that while the Mormons had a right to their religion, and while they had a right to believe that God permitted plural marriages, yet the practice of polygamy as such, being in violation of the laws of our country, could not be indulged, and the court sustained the law in every respect.

This decision and other litigation that was had in the Federal courts in the Territory of Utah and in the Supreme Court of the United States brought the leaders of this church to a realization of the crisis that was upon them, and it was under these conditions that I have here too briefly expressed that the then head of the Mormon Church, Wilford Woodruff, issued what has since been known as the manifesto, the official declaration of which I will here incorporate in my remarks:

To whom it may concern:

Press dispatches having been sent for political purposes from Salt Lake City, which have been widely published, to the effect that the Utah Commission, in their recent report to the Secretary of the Inte-

rior, allege that plural marriages are still being solemnized and that forty or more such marriages have been contracted in Utah since last June, or during the past year; also that in public discourses the leaders of the church have taught, encouraged, and urged the continuance of the practice of polygamy.

I, therefore, as president of the Church of Jesus Christ of Latter-Day Saints, do hereby, in the most solemn manner, declare that these charges are false. We are not teaching polygamy, or plural marriage, nor permitting any person to enter into its practice, and I deny that either forty or any other number of plural marriages have, during that period, been solemnized in our temples or in any other place in the Territory.

One case has been reported in which the parties alleged that the marriage was performed in the endowment house, in Salt Lake City, in the spring of 1889, but I have not been able to learn who performed the ceremony. Whatever was done in this matter was without my knowledge. In consequence of this alleged occurrence the endowment house was, by my instructions, taken down without delay.

Inasmuch as laws have been enacted by Congress forbidding plural marriages, which laws have been pronounced constitutional by the court of last resort, I hereby declare my intention to submit to those laws and to use my influence with the members of the church over which I preside to have them do likewise.

There is nothing in my teachings to the church or in those of my associates during the time specified which can be reasonably construed to inculcate or encourage polygamy, and when any elder of the church has used language which appeared to convey any such teachings he has been promptly reproved. And I now publicly declare that my advice to the Latter-Day Saints is to refrain from contracting any marriage forbidden by the law of the land.

WILFORD WOODRUFF.
President of the Church of Jesus Christ of Latter-Day Saints.

This manifesto was issued by President Woodruff, as he claimed, by the direct revelation from God. It was presented under the laws of the church to a great convention of Mormons and adopted by them, and in the following years again adopted by the Mormon Church, and thus became a part of the fundamental law of the Mormon Church.

Mr. President, it appeared in evidence during the hearings before the Committee on Privileges and Elections that a plural marriage could be valid in the Mormon Church according to the laws of that church only when celebrated by the president or by somebody authorized by him to celebrate it.

This manifesto, which was issued in September, 1890, by President Woodruff, was adopted at general conference of the members of the Mormon Church October 6, 1890, and thereby became a part of the fundamental law of the church. It can not be repealed or modified except by the action of a similar conference.

Senators will thus see that since the adoption of the manifesto a plural marriage is in violation of the laws of the Mormon Church as it is a violation of the laws of the Federal Government. By its adoption the president of the church himself can not perform a legal plural marriage, and what he can not do he can not authorize anybody else to do; so that, as I have said, there can be no plural marriages under the laws of the church since the manifesto of 1890. Any man who has taken a plural wife since then has not, under the laws of the church, made her his wife. The relation is an adulterous one, punishable both under the laws of the church and the laws of the land.

This was sworn to by President Joseph F. Smith. During the course of his examination by Judge Tayler, this question was propounded by him:

Mr. TAYLER. Is the law of the church, as well as the law of the land, against the taking of plural wives?

Mr. SMITH. Yes, sir; I will say——
Mr. TAYLER. Is that the law?
Mr. SMITH. I would substitute the word "rule" of the church.
Mr. TAYLER. Rule?
Mr. SMITH. Instead of law, as you put it.
Mr. TAYLER. Very well. Then to take a plural wife would be a violation of the rule of the church?
Mr. SMITH. It would
Mr. TAYLER. Would it be such a violation of the rule of the church as would induce the church authorities to take it up like the violation of any other rule would do?
Mr. SMITH. It would.

Mr. Brigham H. Roberts testified that he was born in England and came to this country when a boy; that he held the official position of one of the presidents of the seventies in the Mormon Church, and, in addition to that, that he is one of the assistant historians of the church, and also an assistant to President Smith in an organization of young men, an auxiliary organization of the church; that as an author he had written a biography of John Taylor, A New Witness for God, Outlines of Ecclesiastical History, and other works.

In speaking of the force and effect of the manifesto issued by President Woodruff and adopted by the Mormon Church in two of its annual conferences, he said:

I regard the manifesto as an administrative act of the president of the church, accepted by the church, and of binding force upon its members. But I regard it as an administrative act which President Woodruff, holding in his own hands the direct authority controlling that particular matter—that is, the matter of marriages—had a perfect right to make, and the acceptance of that action by the church makes that a positive binding law upon the church.
Mr. TAYLER. And those who do not obey it are subject to the pains and penalties such as a church under its discipline may inflict upon its members who disobey it?
Mr. ROBERTS. Yes, sir.
Mr. TAYLER. That is the rule of the church against the taking of plural wives.
Mr. ROBERTS. Yes.
Mr. TAYLER. How does its force differ from the force of the rule against polygamous cohabitation?
Mr. ROBERTS. Not at all.
Mr. TAYLER. Then the disobedience of the one is as offensive to the church as the disobedience of the other?
Mr. ROBERTS. I should think it would be.
The CHAIRMAN. And both are of equal binding authority?
Mr. ROBERTS. Yes, sir.

Other witnesses testified in a similar manner.

The senior Senator from Michigan [Mr. BURROWS] said the other day, in his very able speech:

Let me say at the outset, touching the charge that the Senator from Utah is a polygamist, and for that reason disqualified from holding a seat in this body, no evidence was submitted to the committee in support of such allegation, and, so far as the investigation discloses, the Senator stands acquitted of that charge. * * * The Senator stands before the Senate in personal character and bearing above criticism and beyond reproach, and if found disqualified for membership in this body it must be upon other grounds and from other considerations.

I wish, Mr. President, to enforce upon the minds of Senators and the country that all that I have said respecting the personal character of Senator SMOOT and the purity of his life are confirmed by the Senator from Michigan. What reason, then, does the Senator have in insisting that Senator SMOOT shall be expelled from the Senate? He has epitomized the objections urged against him in the three following propositions:

First. That at the time of his election the State of Utah and the legislature thereof were under the complete domination of the Mormon hierarchy, of which he is a member, and that such hierarchy so far

"interfered with the functions of the State" as to secure the election of one of its own members and an apostle, and that his certificate of election by the legislature was only the recorded edict of the hierarchy in defiance of the constitutional inhibition that "no church shall dominate the state nor interfere with its functions;"

Second. That this Mormon hierarchy, of which the Senator is a conspicuous member, inculcates and encourages belief in and the practice of polygamy and polygamous cohabitation in violation of the laws of the State prohibiting the same and in disregard of pledges made for its suppression; and

Third. That the Senator, in connection with and as a member of such organization, has taken an oath of hostility to the Government of the United States incompatible with his obligation as a Senator.

I shall undertake, Mr. President, before I close my remarks, to show that not one of the propositions is supported either in law or in fact, and that the protestants, whose mouthpiece the senior Senator from Michigan [Mr. BURROWS] is upon the floor of the Senate, have utterly failed to make good any case against REED SMOOT. I shall not, however, Mr. President, discuss the propositions in the order in which they were taken up by the senior Senator from Michigan. I propose to discuss the second proposition first.

The Mormon hierarchy, so called, consists, as I understand it, of the president and his two counselors and the twelve apostles. The Mormon Church is a religious organization, founded, as claimed by the senior Senator from Michigan, by religious and pure-minded men. The doctrine that has brought it into disrepute and which has caused criminal charges to be preferred against many of its members is the doctrine of polygamy, which has been eliminated, as I have already said, from the church doctrine by the manifesto of 1890, so that, as the church exists now, it is a religious organization composed of a president and his two counselors, the twelve apostles, and lesser officers in the church organized somewhat similar to other religious organizations.

The president is the supreme head of the church throughout the world. His two counselors have no direct power other than to advise and counsel with him when called upon. The twelve apostles, who form a part of the hierarchy, have no temporal authority and no religious authority outside of preaching the gospel. Any member of them, however, can be, and frequently is, given certain powers and authority in the church by the president. These apostles are also consulted by the president in church matters whenever he has occasion to call upon any one or all of them, relating to any church matter.

It is made perfectly clear in the testimony of Mr. Talmage and every other intelligent witness who gave evidence on this subject that the church organization is primarily and wholly for the religious betterment of mankind. Among other things that Mr. Talmage said in the course of his testimony before the Committee on Privileges and Elections was the following:

Mr. TALMAGE. The first presidency, as I have stated, is composed of three high priests, who are known as the presiding high priests over the church. The quorum has general direction of all church affairs throughout the world. The quorum of apostles has no jurisdiction as a quorum, nor has any member—that is, any individual apostle—any jurisdiction personally in the organized stakes and wards of the church while the first presidency is acting, except as the individual apostle or the quorum may be directed to take charge and exercise supervision for the time being in any part. In other words, the quorum of apostles is not a quorum of local presidency in any sense of the term, and the apostles operate in the organized stakes and wards of the church as

teachers and preachers without any authority at all in the matter of enforcing any command or counsel or requirement. Indeed, they have no authority to make or to enforce such, if it were made, unless they act, as I said, by special appointment as representatives of the first presidency. As a representative, by special appointment, of the first presidency, any high priest could act, if so called. But the apostles have a specific work that is required of them.

Mr. WORTHINGTON. Now, what is that?

Mr. TALMAGE. That is the work pertaining to missionary labor, particularly outside the organized wards and stakes.

Mr. WORTHINGTON. Their principal duty is that of missionaries outside of organized stakes?

Mr. TALMAGE. Yes, sir.

This is the "criminal body" that it is charged Senator SMOOT is a member of; and because of that membership it is insisted by the protestants and by the Senators who have already spoken against Senator SMOOT that he should be expelled from this body.

I undertake to say, Mr. President, that there is no evidence that was taken before the Committee on Privileges and Elections that supports the charge that the apostles, as a religious organization, is a criminal organization. There is no testimony that can be found within the covers of the four volumes of testimony that I have here before me, which includes all of the evidence which was heard before the Committee on Privileges and Elections, that even tends to support the allegation so broadly made by the Senators who seek to expel REED SMOOT from the Senate of the United States. I will not say, Mr. President, that they have willfully misrepresented the evidence; I will not say that they have deliberately sought to mislead the Senate on that important subject; they have failed, as it seems to me, to discriminate between the apostles as a religious organization in the Mormon Church and the individual acts of some of the members of that organization. The object and purpose for which the apostolic organization exists is to inculcate religious doctrine into the minds of the people throughout the civilized world and to lead them to espouse the doctrines of the Mormon Church with polygamy eliminated.

Now, that some of the members of the organization still indulge in polygamous cohabitation and in their hearts believe that the doctrine of polygamy is of divine origin does not make the organization a criminal organzation. The apostles, since the manifesto of 1890, according to the testimony of all of the witnesses who have given evidence upon that subject, do not preach the doctrine of polygamy or encourage polygamous cohabitation. It is not what a man believes, but what he does, that makes him a criminal.

Mr. President, we have had an exhibition here to-day that furnishes a splendid illustration of the position which I have just now taken. We all know, as was expressed by the Senator from Georgia [Mr. BACON] and others to-day, that there are honorable Senators upon this floor who as firmly believe that the Confederate States had a legal right to secede and form a separate and independent government as did the leaders of that great movement who put their beliefs into action and organized civil war. They, however, like the Mormons of to-day, have accepted the results of the war and have come back into the Union and taken their share of the burdens and benefits of a reunited Republic. Their beliefs regarding the righteousness of their cause, with many of them, is as firm to-day as it was in the

bloody days from '61 to '65. That belief, however, does not make them traitors to their country, and the belief of any number of the members of the Mormon Church that polygamy is a principle of divine origin, as long as they do not preach it as a part of the doctrines of the church, can bring no more punishment than can a Senator upon this floor be punished for entertaining the principles of constitutional law that led the brilliant leaders from the South to organize armed opposition to the General Government.

So much, Mr. President, for the individual belief on this subject of polygamy. Now, let us look for a moment, if you please, to the church organization of which REED SMOOT is a member.

As I have already stated, that organization as such is prohibited by the rules of the church from preaching or inculcating in any manner the doctrine that the followers of the Mormon Church have a right to and should indulge in plural marriages. The senior Senator from Michigan [Mr. BURROWS] quoted a number of decisions of courts of last resort in several States and text writers to establish the following doctrine:

> Every person entering into a conspiracy or common design already formed is deemed in law a party to all acts done by any of the other parties before or afterwards in furtherance of the common design. The principle on which the acts and declarations of other conspirators, and acts done at different times, are admitted in evidence against the persons prosecuted is that by the act of conspiring together the conspirators have jointly assumed to themselves, as a body, the attribute of individuality so as regards the prosecution of the common design, thus rendering whatever is done or said by anyone in furtherance of that design a part of the res gestæ and, therefore, the act of all.

I am not inclined to criticise that law. I indorse it in spirit and letter and believe that it expresses the principle which governs the action of men in every State in the Union. The trouble, however, with the law which has been quoted by the senior Senator from Michigan [Mr. BURROWS] is that it has no application to the case of REED SMOOT. This law of individual responsibility is based upon the admitted fact that a criminal conspiracy exists and that the person who is charged with a crime is one of the conspirators; that the common object of the organization of which he is a member is to commit a crime and then whatever is done under such circumstances by one of the conspirators is equally chargeable against the others.

The senior Senator from Michigan [Mr. BURROWS] cited, in his very able argument here the other day in support of that doctrine, the case of Spies et al. *v.* The People of Illinois. Spies was indicted and convicted of murder of one Degan, who was killed by a bomb thrown by a fellow-conspirator of Spies at a time when Spies was not present. This doctrine, which I have already quoted from the text writer, was invoked in the courts of Illinois, and it was charged that he was equally guilty with the conspirator who threw the bomb. Before Spies could be charged with criminal offense the State of Illinois was required to show that he was a member of an organization known as the "International Association of Chicago," having for its object the overthrow of the law and the destruction of the Government. It was also shown that these members had advocated the use of bombs and dynamite in any form against the government of the city of Chicago and the State of Illinois and the Federal Government. It was a body reeking with crime, and Spies was one of the leaders of this

organization. The conspirator, in throwing the bomb and killing Degan in the city of Chicago, was simply carrying out in spirit and letter the instructions of the organization of which Spies was a prominent member. Under these conditions the trial court held that he was equally guilty with the bomb thrower in the murder of Degan.

This law, however, Mr. President, can have no more application to REED SMOOT than it can have to the Senator from Michigan himself, for the reason, as I have stated, that the Mormon apostles, as an organization, has not been shown to be a treasonable organization or an organized conspiracy to overthrow any of the laws of the State or country.

That some of the apostles have plural wives is a poor argument to be urged for the unseating of Senator SMOOT.

That officers high in the Mormon Church violate the laws of God and man is a matter of the deepest concern to every fair-minded man in the country; but it furnishes a poor excuse for Senators to inflict punishment upon an innocent man simply because he believes in a religion that is advocated by them.

I now come to consider the first point the Senator made as a reason why he proposes to vote to expel Senator SMOOT. As I have stated, it is, in substance, that the State of Utah and the legislature were under the control and domination of the Mormon hierarchy, of which Mr. SMOOT is a member, and that this hierarchy secured his election.

I am somewhat surprised that a lawyer of the ability and a man of the acknowledged intelligence of the senior Senator from Michigan [Mr. BURROWS] should submit a proposition of that character as a reason for depriving Senator SMOOT of his seat in this body. If that principle were to prevail in the spirit and letter with which he has argued it, it would, in one form or another, vacate nearly every seat in this body. The substance of the charge that he has formulated is that a member of the Mormon Church will vote for a Mormon to hold a political office in preference to a person living outside the fold of the church. That is the charge, stripped of the verbiage with which it is surrounded, in the proposition put by the senior Senator from Michigan.

I wish to call to the attention of the Senators that there is nothing in the Constitution of the United States that prohibits a State from having an established church. If the people of the State of Michigan can revise their State constitution so as to require the taxpayers of that State to pay annually a certain sum for the maintenance of the Episcopal, the Catholic, the Presbyterian, or the Methodist, or any other church, such a clause in the constitution of Michigan or any other independent State in the Republic would not be antagonistic to anything contained in the Constitution of the United States. When the members of the Constitutional Convention of 1787 assembled in Philadelphia for the purpose of preparing a Constitution that would unite the thirteen separate sovereign States in one confederated Republic, it was not their intention to limit the powers of any one of those States in dealing with their own people. The purpose was to enable them, through this Federal agency, to deal more effectively with foreign powers and between themselves than could be done under the old Articles of Confederation. They proposed to, and did, leave the largest liberty

to the people of each one of the separate sovereignties to determine their internal and all domestic affairs as the people from time to time should will. Each State was governed by its own separate constitution, and that constitution could be amended or changed or absolutely destroyed and another one placed in its stead, just as the people willed, in accordance with the terms of the chartered instrument under which they were then living. When they came to provide for additional States to be admitted into the Federal Republic they gave as much liberty to the proposed new State as any of the then thirteen States possessed or should possess after they had adopted the Federal Constitution. So that when Utah became a separate and independent State in the American Republic the people of that State had the same power to adopt a constitution under the Constitution of the United States, and to provide, if you please, in that constitution a tax to support a State church that any one of the original colonies had when it entered into the negotiations that led to the adoption of the Constitution of 1787. That in the whole history of the Republic no State has ever resorted to that is no evidence that the power does not exist, but is a tribute to the independent thought and independent action of the people of the several States in forever keeping separate state and church. It was a wise consideration on the part of the fathers of the Constitution that they left that power with the people themselves, because that power, with the people, can never be abused, as is evidenced by the history now of one hundred and twenty years under that Constitution. More than thirty States have been added to the Republic, and no one of them has ever thought fit to tax the people of the State for the maintenance of an established church.

But, Mr. President, while it is true that the people of no State in this Republic have ever seen fit to make as a part of the organic law of the State any such provision as this, it is a notorious fact that the various religious denominations have, from the earliest history of the Republic, taken a greater or less interest in all public questions and in the politics of the parties that have from time to time controlled the destinies of the Republic. Not only that, but men have combined outside of religious organizations to control cities and States and the Republic itself.

If organizations, religious or otherwise, are to be condemned because they are interested in politics, where would the Senator from Michigan himself be to-day? He belongs to a great political organization that has for its object the controlling not only of the destinies of the State that he so ably represents in this body, but it has the ambition to, and has, as a matter of fact, for more than forty years, controlled the destinies of this Republic itself. Is it any worse for members of a religious organization in any State to prefer one of their own number as a United States Senator than it is for a political organization in the State of Michigan to prefer the senior Senator from Michigan as their representative? If we are to embark upon criticisms of this character, where can we stop?

It is a conceded fact, Mr. President, that the Mormon people outnumber in the State of Utah any other religious sect, and, indeed, they outnumber all other inhabitants of the State. Is there anything unnatural, then, that in an election looking to

the selection of a man for United States Senator to represent the interests of that State in this body the majority of the people would prefer to have a man not only in sympathy with them from a political standpoint, but a religious standpoint as well? The Mormon people in the State of Utah, in doing what is charged by the senior Senator from Michigan [Mr. BURROWS], have not only not committed any crime, but they have followed the principles that govern men in all conditions of life and in all of the different religious denominations. Do not two Baptists—other things being equal—feel a little more kindly toward each other than they do toward two Presbyterians or two Congregationalists? If any favors are to be extended—other things being equal—will not one Baptist favor another rather than a heretic in religion?

The charge, however, made by the senior Senator from Michigan [Mr. BURROWS] as to the domination of the Mormon Church in all political affairs in Utah, is denied by Senator SMOOT and by a large number of witnesses who appeared before the Committee on Privileges and Elections, and it was shown by these witnesses that in Mormon communities where the Mormon vote largely outnumbered the opposition, candidates who did not believe in the doctrines of the Mormon Church were elected to responsible offices. Members of the supreme court of the State have been anti-Mormons, and members of the legislature and various State officers have been pronounced anti-Mormons. My honorable friend at my right [Mr. SUTHERLAND] all his life has not only not been a member of the Mormon Church, but in time and out of time he has publicly and privately denounced plural marriage and polygamous cohabitation, and yet we find a State, with a majority of Mormons in it, sending that gentleman here to represent it in this body.

If it were the fact, as argued to us the other day by the senior Senator from Michigan, that every office, from the lowest to the highest, within the State of Utah is controlled absolutely by some member of the Mormon Church, then this condition as shown by the testimony before the Committee on Privileges and Elections would not exist, and no man who did not acknowledge fealty to the Mormon Church could hold any office, either of high or low degree. I could, had I the time, present to the Senators a long list of names of men who are anti-Mormons and who since the Territory became a State have held important local and State offices.

The people of Utah are divided, not on religious lines, but on industrial and economical lines. Senator SMOOT is a pronounced protectionist, and the majority of the people of that State are of his faith on this industrial question, as are the majority of the people of the State of Michigan of that belief politically; and it was, as I gather from a careful examination of the testimony, upon this branch of the case as presented to our committee that Senator SMOOT was selected, because he more nearly represented the views of the majority of the people on all industrial and economical questions than his opponent. He was selected precisely as my honored friend from Michigan [Mr. BURROWS] was selected to represent his State in this great legislative body.

I think I am safe in saying, Mr. President, that neither the majority in this Senate nor the people in the country will in-

dorse the views of the senior Senator from Michigan that Senator SMOOT should be deprived of his seat in the Senate because a majority of the people of the State of Utah are of the same religious faith as himself and voted for him in preference to his opponent.

The legislature that elected him was composed of Mormons and non-Mormons. He was elected by the Republicans in the legislature, Mormons and non-Mormons, and was opposed by the Democrats in that body, Mormons and non-Mormons.

Mr. President, the next proposition that was made by the Senator from Michigan, advocating the expulsion of Senator SMOOT from this body, was that the Senator, in connection with and as a member of such organization, has taken an oath of hostility to the Government of the United States incompatible with his obligation as a Senator.

It is conceded, I think, by the Senator from Idaho and by the senior Senator from Michigan that as an apostle Senator SMOOT was not required to and did not take an oath, and that his relations with the Mormon Church, so far as that is concerned, are the same as that of a lay member.

I remember that in the testimony of Mr. Critchlow, who was one of the lawyers from that State who came here to aid the protestants against Senator SMOOT taking a seat, he made the statement that his position was no different from that of a lay member of the Mormon Church. So I wish to get fully before the minds of the Senate that neither the Senator from Idaho not the Senator from Michigan nor any of the advocates of the expulsion of Senator SMOOT from this body claim that the oath he has taken which would disqualify him is an oath that was taken as an apostle of the church, and that had a lay member of that church come here he would be under the same disability that is urged against the Senator from Utah by the Senator from Michigan, if he had gone through the endowment house, and that the oath that is here referred to in this third proposition is not an apostolic oath, but what is known as the "endowment oath." If any person ought to know whether Senator SMOOT has taken such an oath, he himself is that person. He was a witness in his own behalf before the Committee on Privileges and Elections and was questioned upon this very subject. He stated that he had taken the endowment oath when a mere boy and gave the circumstances under which the oath was taken. His evidence is that there is absolutely nothing in that oath of the character charged by the senior Senator from Michigan [Mr. BURROWS]. He further stated that not only was it no oath of hostility to the Government of the United States or incompatible with his obligations as a Senator, but that it was purely of a religious character without reference to the obligations that he assumed in this body when he took the oath of office. It is conceded not only by the senior Senator from Michigan that Senator SMOOT is an honorable man, but by every person who has had anything to do with the protestants before the Committee on Privileges and Elections. He says, under the solemnity of an oath before our committee, that there is nothing in the endowment oath that interfered with his taking the oath that he did in this body as a Senator of the United States, and that he is untrammeled, so far as that oath or his connection with the Mormon Church is con-

cerned, in giving absolute fealty in every respect to the Government of the United States. If, Mr. President, there were no other testimony in the case on behalf of Senator SMOOT than his own, I think it should be enough to satisfy Senators, especially in view of the fact that for three years they have noted his conduct as a Senator and have seen in him nothing but the high character that all accord him—that his word should have a controlling force and effect on this question.

The testimony, however, that has been offered upon this branch of the case by those opposed to Senator SMOOT is of a character that would receive but little consideration in a court of justice. Of all the witnesses who testified before our committee there were only seven who made any pretense of testifying about such an obligation. The testimony of these witnesses is all of a vague and indefinite character. The witnesses themselves are untrustworthy or disreputable in character, and the seven combined would receive but little consideration in any court of record in any of the States of the Republic on any question that involved even the property interests of a citizen; much less, then, should they receive consideration here where the rights of a great State are involved, in addition to the reputation of one of the leading citizens of that State. As an illustration of the character of these seven witnesses I challenge the attention of the Senate to the testimony of Mrs. Elliott, who was brought here from Utah to testify regarding this oath. In order to qualify herself to make a proper showing before the committee, the Senate, and the country, she was asked various questions regarding her own record. She testified that she was living with a second husband; that her first husband was dead. She stated when he died, and that after she had lived as a widow for some time, she again married. When the respondent produced his witnesses the first husband of Mrs. Elliott was brought here, and he said he was not only not dead, but that he had been a very live man ever since he and his wife had separated; that he had corresponded continuously with his children, who were with their mother, and that she knew when she testified that he was living and well. Can anybody take evidence of that kind to impeach the character and standing of a citizen like Senator REED SMOOT?

Senator SMOOT is corroborated in his testimony by that of all of the leading witnesses who gave testimony on that subject. While most of them declined to give the endowment oath, they gave as their reason for such declination that it was a secret religious obligation. The same reasons that influence a Mason to decline to reveal the oaths that are taken by a member when he takes the different degrees in that great secret organization influenced these witnesses in declining to give this religious obligation. But each witness was explicit in stating that there was nothing in the obligation that indicated hostility of the Government of the United States. In numbers and character these witnesses overshadowed the testimony of the witnesses who had sworn to such an obligation.

No person, as it seems to me, who can properly analyze testimony can take the evidence that has been offered upon this proposition and arrive at any other conclusion than that Senator SMOOT is right and truthful when he says that he has never taken an obligation that is incompatible with his duty to the

Government of the United States or that would influence him as a Senator in this body.

I have not the time to take the testimony of each witness and read it so that Senators can see that the conclusions that I have reached upon this testimony are not only logical but irresistible.

The report signed by the senior Senators from Ohio and Indiana [Mr. FORAKER and Mr. BEVERIDGE] and the junior Senators from Vermont and Pennsylvania [Mr. DILLINGHAM and Mr. KNOX] with myself contains a careful analysis of the testimony on that subject, and I commend it to any doubting Thomas in this body, if such there be on this question.

The oath that was taken by Senator SMOOT when he became a member of the Senate of the United States supersedes any oath that he may have taken at any previous period in his life. It was taken without any mental reservation, and his whole course in the Senate has shown that no obligation that he has taken in life, so far as influencing his conduct, is in conflict with his duty as a United States Senator. I shall therefore, Mr. President, pursue this line of thought no further. There are, however, some questions that I desire to discuss briefly before I close my remarks.

There is a great misunderstanding in the public mind regarding the extent with which polygamous cohabitation is practiced among the Mormons. With a church membership of more than 300,000, in 1890 it was ascertained by a careful census that there were 2,451 polygamous families. Since the manifesto of 1890, as I have already shown, the plural marriages that have taken place in the church have been exceedingly few in number. They have been sporadic and probably do not exceed in number the number of bigamous marriages that can be found in a like population in almost any State in the Union. These polygamous families were all formed prior to the manifesto of 1890. When they were entered into the parties taking on these relations believed that they were justified in the sight of God and man; children were reared under such conditions; and, as I have already shown, the laws of our country have legitimized these children.

The problem that confronted these men who had plural wives after the laws of Congress had legitimized their children by their plural wives was, What should be done with the mothers of their children? Should they be driven into the street penniless and uncared for, or thrown upon society in the anomalous and unenviable position that they would hold? Or should these men who, when they took them as plural wives, believed, as did the women, that the relation was sanctified in the sight of God and that it was pure and exalted by religious approval, care for them?

The consensus of opinion in the State of Utah among the Gentiles as well as the Mormons was that if the husbands of these plural wives cared for them, without flaunting such relations in the face of the public, it would be better to let them care for them along with the children these women had borne them and let time and death solve the ultimate problem of the extinction of polygamy in the Mormon Church.

The leading citizens of Utah who were non-Mormon not only acquiesced in this solution of the problem, but they gave it their sanction by word and act.

I denounce any so-called plural marriages since the manifesto of 1890 in as strong terms as does the Senator from Michigan [Mr. BURROWS]; but, Mr. President, I want Senators and I want the people of the country to understand that since 1890 there has been an honest effort on the part of the Mormon people to live up to the laws of the land and live up to that manifesto issued by the head of the church.

Mr. BURROWS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Illinois yield to the Senator from Michigan?

Mr. HOPKINS. Certainly.

Mr. BURROWS. May I ask the Senator if, when he states that there has been an honest effort made to live up to the manifesto, he does not lose sight of the fact that at least five of the apostles have taken new wives since the manifesto?

Mr. HOPKINS. Mr. President, I thank the Senator for calling my attention to that. One would suppose from the position taken by the Senator from Michigan and by the Senator from Idaho that not only five apostles had taken plural wives, but that they were multiplying these plural marriages as they did before the manifesto of 1890. Can the Senator from Michigan tell me the number of plural marriages in the Mormon Church since 1890?

Mr. BURROWS. The number is shown in the evidence, but I do not now exactly recall it.

Mr. HOPKINS. I have it.

Mr. BURROWS. But there have been several.

Mr. HOPKINS. I am going to answer the Senator on that.

Mr. BURROWS. A number of them have taken plural wives.

Mr. HOPKINS. I am going to discuss that fully.

Mr. BURROWS. It does not follow from that that others are taking plural wives, but it is true that the head of the church and some of the apostles have indulged in plural marriage since the manifesto. One thing more. I should like to ask the Senator if the older people are called upon to take care of their wives as a humane act? Is there any reason why they should continue to cohabit with them and increase the number of the offspring?

Mr. HOPKINS. I will say to the Senator that on that proposition I will give him the answer of the head of the Mormon Church, which is found in the evidence. It is not necessary for me to make an answer to that proposition. That very question was put to the head of the Mormon Church, who has had a number of children born since the manifesto, and I submit that answer, not only to the Senator, but to Senators in this body and to the public generally.

Now, Mr. President, to come back to my proposition. Mark you, this manifesto was promulgated in 1890, sixteen or seventeen years ago. How many plural marriages have there been since that time? We have here, as I have said, four volumes of testimony. They have raked the entire Mormon Church from Mexico to Canada, and throughout the mountainous States; they have taken every case that they could find, whether the evidence warranted it or not. I have gone through the testimony, and I find that during the sixteen or seventeen years since the manifesto, on their own showing, there have been only twenty so-

called "plural marriages"—a little over one year in a population of 300,000. Take the same population in almost any part of the country and there would be nearly the same number of bigamous marriages.

The evidence does not warrant the conclusion that there have been even twenty of these marriages. I base my statement as to the number upon the contention of the protestants themselves, but when you come to sift the evidence it absolutely fails, and if the law that governs testimony in actions dealing with property and lives in the courts of our country were to be invoked, they could not show five cases of this kind.

The Senator has suggested that five of the apostles have taken plural wives. I met that proposition when I showed that if these men had violated the law, the apostles and the church itself did not preach the doctrine of polygamy. I met that when I showed that this manifesto is sent out by the missionaries, is scattered broadcast in the church, and is acquiesced in as one of the doctrines of the church to-day. That one individual or five individuals violate the law can not make a criminal out of a church of 300,000 people. That one man or five among the apostles violate the law can not make REED SMOOT a criminal, any more than the Senator from Michigan would be a criminal because some Senator sitting near him might violate the law. REED SMOOT has no control over the individual actions of the apostles any more than the Senator from Michigan has control over the individual actions of the Senator from Colorado.

Mr. President, as I have said, it is not my purpose to take up very much more time of the Senate in the discussion of this question.

Mr. FULTON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Illinois yield to the Senator from Oregon?

Mr. HOPKINS. Yes.

Mr. FULTON. The Senator may have explained, but I did not understand him if he did, whether in the case of the twenty polygamous marriages which have been celebrated since 1890 the ceremony was performed by the church in all of them or any of them?

Mr. HOPKINS. I am very much obliged to the Senator for calling my attention to that. Under the rules and regulations of the church a plural marriage, even in polygamous days, was not a legal marriage, unless it was performed by the president of the church or by somebody designated by him.

Since the manifesto of 1890 neither the president nor any other official of the church has authorized a plural marriage, and none has taken place in a Mormon church or in a sanctuary of any character belonging to the Mormon Church within the limits of the United States. The alleged taking of plural wives among the apostles, mentioned by the Senator from Michigan, occurred in Canada or Mexico, outside of the limits of our own country. This is enough to show that those individuals when they left their own country recognized that they had left their church, and that they were not only violating the laws of the Mormon Church, but that they were violating the laws of our country as well. So they went to a foreign country to consummate this relation. I showed, Mr. President, in my earlier re-

marks that that relation is an adulterous one in the eyes of the Mormon Church, the same as it is among the Gentiles themselves.

Mr. DUBOIS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Illinois yield to the Senator from Idaho?

Mr. HOPKINS. I do.

Mr. DUBOIS. I will ask the Senator from Illinois, if he will allow me, if the Mormon Church has undertaken to punish any of these polygamists for entering into this adulterous relation?

Mr. HOPKINS. I will answer my friend from Idaho by saying that the other day I read in a newspaper that a member of a religious organization in one of the Western States had committed the crime of bigamy. I ask the Senator if he knows whether the members of his church have prosecuted that man? One question is as fair as the other. It is not necessary in order to clear the skirts of REED SMOOT, or any lay Mormon in the church, that he should prosecute a person for committing a crime. The obligation is upon the Senator himself with the same degree of responsibility as it is upon any member of the church. If he knows that a man has violated the law it is his duty, according to his own code of ethics, to present that evidence to a grand jury to have them indict him. Has he gone and presented these charges to the grand jury in the State of Utah or in Salt Lake City?

Mr. DUBOIS. I myself have not.

Mr. HOPKINS. That is all I want to know.

Mr. DUBOIS. But the people of Utah have gone, and the courts of Utah have paid no attention to the presentation, and it is useless.

Mr. HOPKINS. Where a crime is committed and nobody follows it up, the criminal goes unwhipped of justice. That is true outside of the Mormon Church as it is true inside of the church; and if they had legal evidence of any of these apostles taking plural wives, why have they not prosecuted them instead of coming here and seeking to punish a man who has done more than any thousand people in this country to stamp out the crime of polygamy? They are trying to punish a man who has shown that he possesses the qualities of heart and head to do all in his power to stop this crime, and yet because some members of the church violate the law, these honored Senators say that he should be expelled from the Senate of the United States.

Mr. BEVERIDGE. Mr. President——

The VICE-PRESIDENT. Does the Senator from Illinois yield to the Senator from Indiana?

Mr. HOPKINS. I yield.

Mr. BEVERIDGE. In answer to the Senator's question, whether the Senator from Illinois could cite an instance where there had been any punishment by another Mormon of Mormons for having entered into polygamous relations, I have not read the testimony recently, but the Senator has, and I call his attention to a case, as I remember it, when I was present when the testimony was being taken. I believe it was a bishop of a stake by the name of Harmer, who had taken another wife, and the attention of the Senator from Utah, not then a Senator, was called to it. The bishop himself went to Provo,

the home of the Senator from Utah, not then a Senator, and told him about this thing, about which there was a great deal of rumor. The upshot of the whole matter, as I remember the testimony—and the Senator from Illinois will know about what it was—was that on his way home from Provo this bishop of the stake, who had entered into relationships with more than one woman, was arrested by the sheriff, was by the church authorities deposed from the bishropric, and was prosecuted and finally sent to the penitentiary. I do not know whether that is correct or not, but that is as I remember it.

Mr. DILLINGHAM. He himself testified to it.

Mr. BEVERIDGE. The Senator from Vermont suggests that it was the bishop himself who testified to that fact.

Mr. DUBOIS. If the Senator from Illinois will pardon me, I will show the difference. Bishop Harmer was not married to the second woman. He was living with her in a purely adulterous relation. Therefore the Mormon Church made an example of him. Had she been married to him as a second wife, they would not have interfered, because they never have done so.

Mr. BEVERIDGE. Then, the Senator's suggestion is——

Mr. HOPKINS. Right here let me say a word.

Mr. BEVERIDGE. Yes.

Mr. HOPKINS. I have shown, Mr. President, that there can not be in the Mormon Church to-day the taking of a plural wife. That is an impossibility under the law of the church, and the relation is an adulterous one, just as stated by the Senator from Idaho.

Mr. BEVERIDGE. And the suggestion of the Senator from Idaho in answer is that the reason why they deposed him from his religious office and the reason why they sent him to the penitentiary for a criminal offense is that he did not marry the woman.

Mr. DUBOIS. Exactly; precisely.

Mr. BEVERIDGE. Then, according to that, the Senator from Idaho must go on and show that it is the habitual practice to persecute people out there if they do not contract polygamous marriages, which, of course, is reductio ad absurdum.

Mr. SUTHERLAND. Mr. President——

The VICE-PRESIDENT. Does the Senator from Illinois yield to the Senator from Utah?

Mr. HOPKINS. Certainly.

Mr. SUTHERLAND. If the Senator from Illinois will permit me, I will state that I am pretty familiar with the Harmer case referred to, although I do not now recall precisely what the evidence showed about it.

Mr. Harmer was a bishop in the county in which my colleague lives. It was very clearly shown when he was arrested that he had gone to Mexico and had married his plural wife there. By the way, Utah has a law upon the subject of polygamy, forbidding and punishing it. Mr. Harmer could not be prosecuted under the law of the State of Utah because the offense was not committed in that jurisdiction. The only thing for which he could be prosecuted was the crime of adultery. He was prosecuted for that.

Mr. BEVERIDGE. And sent to the penitentiary.

Mr. SUTHERLAND. Not only is that the fact, but I happen to know something further about it. My colleague himself spoke to one of the civil officers of the county, the sheriff of the county, whom I know very well. The sheriff of the county investigated the case. The sheriff was a Mormon. This man was arrested. He was prosecuted by a Mormon district attorney and was convicted before a Mormon judge and sent to the penitentiary for eighteen months. That is the history of the case.

Mr. BEVERIDGE. Upon the original information of the Senator from Utah himself.

Mr. SUTHERLAND. Yes. Not only that, but, as I am informed and as I have every reason to believe is the fact, after this man had been in the penitentiary for something less than a year, an effort was made to secure his pardon, and a petition was presented to my colleague, who declined to sign it. He declined to ask for the man's pardon.

As I say, I do not recall what the evidence was, but I state what I know about it because I happened to reside in Utah County at the time, within 6 miles of where it happened.

Mr. HOPKINS. I thank the Senator for giving us the information he has upon that subject, and I want to emphasize to the Senate a fact which appears in the evidence before the committee, and that is that the younger Mormons throughout the length and breadth of the State of Utah and wherever the Mormon Church is located are opposed to polygamy and polygamous cohabitation as much as is the Senator from Michigan himself.

That time and death will speedily end this blot upon the church and upon the civilization of our country as well is evidenced from the fact that in October, 1899, nine years after the first census had been taken, the number of polygamous families had been reduced to 1,543. Another investigation was made in May, 1902, as to the number of polygamous families in the Mormon Church, and the 1,543 families had dwindled to 897. At the time that this case was being considered by the Committee on Privileges and Elections it was stated without question by the leading counsel for Senator SMOOT that the number of polygamous families in existence to date had been reduced by death to about 500.

Mr. President, in the short space of sixteen or seventeen years the number of polygamous families in the Mormon Church has been reduced from 2,451 to 500. Those that remain are old men and old women, and in a few years the 500 will be entirely blotted out. Then the Mormon Church will stand forth freed not only from preaching and inculcating the doctrine of plural wives and polygamous cohabitation, but in the practice of the church it will be freed from having a solitary polygamous family within its fold.

I can understand how some fanatics may say that this method of dealing with this crime upon our civilization is too charitable and that the strong arm of the law should take these gray-haired offenders, both men and women, and punish them to the limit of the law. The experience of mankind, however, Mr. President, is entirely against such drastic measures. Persecution (or what seems to the prosecuted persecution) simply inflames the spirit of the martyr, and instead of stifling the of-

fense or crime of polygamy, it stimulates the fanatics in the church to practice it and to preach it, believing that by so doing they are earning eternal salvation and a higher and better place near the throne of God.

The overwhelming sentiment in Utah and in the adjoining States where the Mormon Church exists is in favor of eliminating the last vestige of polygamous cohabitation in the church by time rather than the adoption of the drastic measures that I have already referred to. The leading Gentiles of Utah favor this plan. They believe it to be more humane and more effective than to make martyrs of those who still adhere to the plural wives taken by them prior to the manifesto of 1890. This problem of plural wives and polygamous cohabitation is one that our missionaries have met with in their missionary fields in the Orient.

In a book published in 1904 by Harlan P. Beach, entitled "In India and Christian Opportunity," in dealing with the general subject of problems connected with new converts, the author says, on page 222:

Polygamy.—One difficulty in the way of receiving a professed convert, though affecting only a small percentage of candidates, is a most perplexing one; it is that of applicants who have more than one wife. As Hindoo or Mohammedan they have entered in good faith into marriage contracts with these wives, and if a man puts away all but one what provision shall be made for the rejected, and on what principle shall he decide as to the one to be retained? * * * Some good missionaries hold that where the husband is living the Christian life in all sincerity it is better to receive into the church such a candidate, though not eligible to any church office, than to require him to give up all but one wife and thus brand with illegitimacy his children by them, as well as occasion the wives so put away endless reproach and embarrassment.

The Rev. John P. Jones, D. D., in a book which he published in 1903, in treating of this same subject, said:

If it be demanded of the man that he put away all but one of those wives taken in heathenism, then we ask whether it is Christian or even just to cast away one to whom he was solemnly and religiously pledged according to the laws of the land and with whom he has been linked in love and harmony for years, and from whom he has begotten children? * * * It is not easy, on Christian grounds, to decide such a problem as this; nor is it very Christian to put a ban upon any woman who, in accordance with their religion and their country's laws, has formed this sacred alliance with a man and has lived with him for years; nor can it be right to brand with illegitimacy the children born of such a wedlock.

I cite these authors, Mr. President, to show that men of liberal views, but sincere Christian spirit, find it difficult to meet and solve the problem among the converts to the Christian religion in the Orient. The highest authority on this subject counsels toleration and the recognition of the convert to the rights of the Christian church, although he may still hold to his plural wife.

These examples show the questions that our missionaries are meeting with constantly. These men have been taught, from their experience in countries where polygamy is practiced, the doctrine of charity, and have recommended practically the same course toward the converts to Christianity—where these converts have plural wives—that has been adopted by the people of Utah and the other Western States where polygamy once held sway as a part of the doctrines and teachings of the Mormon Church.

It is not, however, for the Senate of the United States, Mr.

President, to determine which course should be pursued to eliminate forever this last vestige of barbarism on the civilization of our times. We have only to deal with Senator SMOOT and his record, and that alone must determine our action. From the consideration that I have given to it, and for the reasons that I have here expressed, I feel, Mr. President, that I would be false to the oath that I have taken were I to vote to expel him from the Senate of the United States, and I shall, therefore, when the time comes for the Senate to determine this momentous question, cast my vote in favor of his retaining his seat.

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